88-1460 (2)

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1988

DENNIS GROHS,

Petitioner,

vs.

GOLD BOND BUILDING PRODUCTS, a division of NATIONAL GYPSUM COMPANY,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Kathleen B. Baliunas
[Counsel of Record]
One North LaSalle Street
Chicago, Illinois 60602
Ph: (312) 782-5906
Attorney for Petitioner

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

DENNIS GROHS,	)
Plaintiff,	) No. 84 C 7999
vs.	) Chgo., Ill.
GOLD BOND BUILDING	) 2:00 p.m.
PRODUCTS, a Div. of	) Feb.20, 1987
NATIONAL GYPSUM CO.	)
Defendant	)

EXCERPTS OF PROCEEDINGS BEFORE THE

HONORABLE JAMES B. MORAN

APPEARANCES:

For the Plaintiff: K. B. Baliunas

For the defendant: R. E. Lieberman,

James A. Burns,Jr.

K. Joseph Snyder, Rpr, CSR

Official Reporter

United States District Court

219 S. Dearborn St., Room 2342

Chgo., Ill 60604

Telephone: (312) 939-2059

District Courts Oral Opinion

THE COURT: Well, people, I'm prepared to rule. I do conclude that defendant has been guilty of a nonwillful violaton of the act. I get there somewhat differently from where either side is coming from. What came through loud and clear in the evidence is we're not talking about a white-collar kind of business, or a sedentary business, or a high-tech business. Manufacturing wallboard is hard, rough work in a primary industrial process.

In 1981, construction was slow. Waukegan couldn't produce volume, because of the market conditions, which was close enough to capacity to keep costs below the anticipated price.

There were also plant problems, an aggressive union, a partial loss of control of personnel because of drugs, resentments, a lot of entry-level workers. The decision was made to close it down.

District Courts Oral Opinion

When it was reopened or when the start-up started, certainly, it was done through a conscious mangement decision that they would give it a try, talking in terms of 90 days, and see if it could be reopened under conditions conducive to long-term profitability. As far as the company was concerned, that meant no union. So I think one thing that came through, without question, was that on the start-up, that decertification was a key element of corporate strategy.

How to go about that? One was to co-op the union leadership. John Roth had been the union president for 20 years. He was the spokesman for the employees. If he became a supervisor for the company, he would no longer be the president of the union, and the company would also have his leadership skills enlisted on behalf of Gold Bond.

Another was -- and, I must say, I found this one very curious because people were practically sitting up here and testifying to some fairly massive unfair labor practices -- another was a decision to basically say no on re-hires to former employees because of their adherence to the union.

Indeed, the termination of the plaintiff and the agreement with the union, through Mr. Roth, not to insist on re-hires of union people occur, I think, the same day. It was either the same day or a day

apart; I'm not quite sure.

A third aspect of that stradegy was that management would stroke the new work force a little more than had previously been the practice, although given the kind of industrial setting that we had, as I said, we are not talking about faculty committees and the secretary pool at a law firm. It is rough, though work.

Well, how did the plaintiff fit in? He had been with the company for over 20 years. He had come up through the ranks. One thing that was quite clear from who testified and what they testified about is that Gold Bond did enlist its management

personnel from people up through the ranks to a large extent. It, obviously, didn't require a Harvard or University of Chicago MBA. People started out on the floor. If they had the ability and the competence and the dedication, they could rise up through the company and become important management people.

Basically, the company educated its own management. That meant people who were company men who were with the company for many years with lots of experience with them. It meant, at least, if the witness here were any indication, a tendency to have people manage that were big, strong, husky fellows without particularly sophisticated educational backgrounds, who were direct, strict, somewhat rough around the edges, and comfortable on the production floor.

Certainly, Mr. Grohs fit into that mold. His production evaluations in

1976, 1977, 1978, and 1979 were all acceptable. Under the company terminology, acceptable was considerably better than marginal. It meant not somebody who was a star but somebody who was performing at a very capable level.

In 1980, the evaluation definitions got changed somewhat. Mr. Grohs was rated as competent plus, close to outstanding and, in 1981, strong competent. Certainly, on the basis of the company's own evaluation of him, he was: a strong, able, experienced board plant superintendent; quite clearly strict; not terribly flexible and, when he thought it was necessary, a headknocker; at times, a tough boss. But that was,

the evidence certainly indicated to me, the role that his employer wanted him to play, at least until the time of the reopening and the effort to decertify.

There were substantial merit increases. He was kept on during the shutdown. He was sent elsewhere in the country to train people. He was a good, strong performer, and he was terminated.

I think the biggest disputes in the evidence, actually, concerned what role did Spitz play in the termination. On that one, I disagree with plaintiff's counsel. I don't think he played much of a role.

Was there a conference call on April 28, 1983? I am inclined to believe that there was not. It is unlikely that he would have gotten involved in a personnel decision three levels down, but he certainly had told Sarvis what he wanted.

He didn't want a union, and Sarvis was responsible, from late March on, for Waukegan.

Mr. Spitz had suggested Mike Ward as well as possible others as somebody who would be good in Waukegan. What was clear is that Mr. Ward was another person who had come up through the ranks who was a no-nonsense guy.

Sarvis certainly understood that the key objective of no union, decertification, which would take some stroking of a new work force to win that, that that did mean good labor relations, call it sharing and caring or what else, or whatever you want to

call it. Michael Ward certainly knew that, too, and that they had 90 days, basically, to turn it around. That meant to Sarvis and Ward that even though Ward wasn't himself a particularly sharing and caring kind of person -- like I said, he came out of somewhat the same kind of mold as the plaintiff -- he wanted supervisors who wouldn't upset the hourly employees unduly. Both of them were certainly aware that stroking wansn't one of plaintiffs's strong points.

Finally, it was clear that Mr. Ward was also aware that he wanted and needed Roth, and Roth didn't particularly like the plaintiff.

Where does that leave us? I do believe that because of the immediate objective, the fact that plaintiff was one kind of supervisor or the kind of supervisor, basically, that the company

had raised him to be, which was not totally what they had in mind during the immediate future at Waukegan, that that was a factor. But I'm also persuaded that age was a factor.

Sarvis testified that Spitz referred to the plaintiff as "old and fat." I don't find Sarvis a particularly credible witness. I must say that when he said that, I thought to myself: I think Mr. Sarvis is verbalizing something that he thought back at the time all this hapened in 1983. Certainly, on the basis of Mr. Ward's testimony -- and in that sense, I believe that -- that Sarvis leaned on him a little bit to get rid of Grohs.

There was a feeling that plaintiff was expendable, and

it didn't make any difference that he had been there for more than 20 years. They didn't choose to try to teach an old dog new tricks. So the first thing is to encourage his resignation by slating him to be a guard and then, when that didn't happen, fire him 16 days after Mr. Ward arrrived on the scene.

The plaintiff had a strong record as a production superintendent, over 20 years with the company. I could not help but conclude that if he had been, say, 30, given the kind of production supervision record that he had, the company would have sought to teach him new tricks to the limited extent that that was necessary or, at minimal, a transfer. Instead, there was a discharge, and then what I must say I look upon as a whole laundry list of irrelevancies.

Now, I made up a list. I want to go through them. I may be a little in error on some of them.

Well, there was a speech -- it was a little unclear whether this was back in 1979 or it was in 1981 -- where the plaintiff in effect said to people: shape up, or you're going to ship out -- which upset employees but, which as I understood the evidence, was about where the company was coming from at the time; and that what he was saying was not more than what other people were saying or at least thinking with regard to the Waukegan plant.

We had certain incidents as to what did or didn't happen in social settings off the premesis on a couple of occasions two

years, three years, prior to termination in circumstances where there were no grievances, where it didn't seem to cause much of a ripple at the time in terms of continuing relationships within the company at the plant, which kind of got dredged up when somebody had to come up with a list for EEOC.

I saw Mr. Grohs testify. I heard him. Do I think that he is capable of some heavy-handed humor that is pretty tasteless? Sure, I think, Mr. Grohs, that you're capable of that. But if every indiscretion by every employee at some Christmas party, fueled by a little alcohol, over the years is cause for termination after 20 years two and three years after the event, the casualty list of old-time employees would be long, indeed.

What do we know? We know that there was a claim of an incident in June of 1981. I must say, I can't remember which one was supposed to -- I guess that was the one involving Darlene Ramig, who did testify that she didn't remember it when first interviewed in 1984. Certainly, the evidence indicates that it just didn't make much of a stir at the time, and there just wasn't any aftermath, if it ever happened.

I'm inclined to believe that, yes, there was a heavy-handed, tasteless, humor-type remark. As I recall the evidence, at the same time, Miss Ramig was calling Mr. Grohs a fat s.o.b. I don't know how it ends up as something on a list of susbstantial causes for discharge two years later, more than two

years. Well, about two years later.

The alleged matter involving Miss Parkman, while it's a little hard to tell whether anything like that even occurred and, if so, it certainly ends up down the memory hole in the sense that there is no official reprimand, there is nothing in the personnel records. Again, it doesn't seem to have left any significant trauma. Again, it's dredged up long after the event.

The same with regard to the remark regarding Miss Parkman which Miss Ramig testified to: They are pretty much in the same boat.

Then we have rumors -- who knows? -- this claim that the plaintiff may have been the source of certain rumors and may have scratched himself, he may have done this, he may have done that, all of which just is sort of plant gosssip kind of things that are used to haunt somebody

long after the event. If they had been a matter of concern to management at the time, if they had been a matter of concern to people who were involved in it, if, in fact, they ever happened, one would expect that they would be a matter of concern contemporaneously and not on a laundry list long afterwards.

Board tagging. I was certainly persuaded by Mr. Coventry and, after that, I believe Mr. Qualls' testimony, that that was one of the plaintiff's jobs, to make a judgment as to whether things could go out. If he made a judgment as to whether things could go out, they went out.

The employees didn't like him. Plaintiff conceded that there undoubtly were employees that didn't like him. Given the nature of what he was supposed to do, which was to be a relatively strict boss, it would be surprising if there were some that didn't.

But I looked at the grievances. If a company or plant has serious morale problems, serious problems with a particular supervisor, there are going to be lots of complaints and lots of grievances. There just weren't really any grievances. The occasional one, which the company -- one, Roth testified filing grievances about 50 percent of the time on complaints, and there weren't many with respect to the plaintiff.

Sabotage? A couple of group acts that were unrelated to the plaintiff.

Equipment, not up to snuff? Well, that was basically, by the testimony, Mr.

Qualls' overall responsibility, and a recognition that there was no basis for taking any action against him because of equipment problems.

Somewhat more serious, did Mr. Grohs call Campbell and Phil Pippens "nigger" at some point? It may have happened. But, again, there was no grievance. It happened long before the discharge decision. It was unclear whether it ever happened.

On "boy", I was persuaded that, yes, this was Mr. Grohs' appellation, virtually everybody. He was told that Campbell didn't like it, and he did quit, and he should have understood.

before anybody brought it to his attention that that was an inappropriate word to use.

But, again, a failure to deliver a note at some time, one grievance, where somebody wasn't permitted to go home with, long after the event, a reinstatement but without backpay.

It was a laundry list. I suppose one equivalence of a laundry list is a pretext list. I get back to the conclusion that all of that was, for the most part, meaningless. Management did want a little softer supervision. So that that was a factor, but it was a factor related to the plaintiff's age in the sense of they were, in effect, saying: And we're not going to take a chance with him. He has been set in his way too long; he is too old, and he is expendable.

That's why I come out the way I come out. Where does that leave us?

Mr. Lieberman: Well, I just heard Your Honor rule, and that will be the ruling, I take it, against us.

Ms. Baliunas: Your Honor --

The Court: It could have been worse. I could have found a willfull violation, and I don't think that was it.

Ms. Baliunas: Dennis has not been gainfully employed in four years. Is it possible for him to get reinstated?

The court: That is a normal remedy, but I think maybe you people ought to talk to each other first.

Mr. Lieberman: We will certainly do that.

Ms. Baliunas: Could you set a time for us to come back? Because I would really like to get the back-pay issue straightened out as quickly as possible, get him back to work if we can. He still has 15 more good years on him. Could you give us a date to come back, Judge, if we can't straighten this out? Then we would petition you.

The Court: Why don't we figure on -- do you want to give it a week and figure on getting together next Friday?

Mr. Lieberman: Fine, Judge.

Ms. Baliunas: What time did you want us to be here, Judge?

The Court: Say, 2:00 next Friday?

Ms. Baliunas: Fine. Thank you, Your Honor.

Mr. Lieberman: Thank you, Your Honor.

The Plaintiff: Thank you, Your Honor.

The Court: It's better that you hold on to these than I.

Ms. Baliunas: Thank you, Judge.

The Court: I think that's it.

(proceedings concluded.)

I, K. Joseph Snyder, do hereby certify that the foregoing is a partial, true, and accurate transcript before the Honorable James B. Moran, on February 20, 1987.

(1283) Dennis Grohs,

Plaintiff-Appellee

Cross-Appellant,

v.

GOLD BOND BUILDING PRODUCTS, A DIVISION OF NATIONAL GYPSUM COMPANY.

Defendant-Appellant,

Cross - Appellee.

Nos. 87-1527. 87-1548

United States

Court of Appeals,

Seventh Circuit

Argued Nov. 13, 1987

Decided Sept. 27, 1988.

As amended Sept. 29, 1988.

As Amended on Denial of Rehearing and Rehearing En Banc Nov. 2, 1988.

Discharged supervisor filed age discrimination suit against former employer. The United States District Court for the Northern Disrtrict of

Illinois, Eastern Division, James B. Moran, J., determined that former supervisor had successfully established prima facie case of age discrimination and that employer's articulated nondiscriminatory reasons for discharge were manufactured. On appeal, the Court of Appeals, Kanne, Circuit Judge, held that articulated reason for supervisor's discharge, difficulty getting along with his peers, was not pretext for age discrimination.

Reversed.

See also 627 F. Supp. 1555.

1. Civil Rights 44(6)

Age discrimination plaintiff may meet his burden of persuasion at trial directly by presenting direct or circumstantial evi-

(1284) dence that age was determining factor in employee's discharge or indirectly through burden shifting analysis. Age discrimination in Employment Act of 1967, 1 et seq., as amended, 29 U.S.C.A. 621 et seq.

2. Civil Rights 9.10

For purposes of determining whether unlawful discrimination has occured, discharged employee's "qualification" for job depends upon whether employee meets employer's legitimate expectations, measured as of time of discharge;thus, qualification may change from time to time and fact that individual may have been qualified in the past does not mean that he is qualified at a later time.

See publication Words and Phrases for other judicial constructions and definitions.

3. Civil Rights 9.15

Articulated reason for 51 year old supervisor's discharge, his difficulty getting along with his peers, was not pretext for age discrimination-even though supervisor formerly was qualified for position despite his "disastrous" labor relations skills, in light of employer's adoption of new management policies placing greater emphasis on labor management relations. Age Discrimination in Employment act of 1967. 1 et. seq., as amended, 29 U.S.C.,A. 621 et seq.

Richard E. Lieberman, Ross & Hardies, Chicago, Ill, for defendant-appellant -cross appelee.

Kathleen Baliunas, Chicago, Ill, for plaintiff-appelee/Cross appellant.

Before Posner, Flaum, and Kanne, Circuit Judges.

Kanne, Circuit Judge.

The claim in this case is one of age discrimination. At age 51, Dennis Grohs was fired by his employer of 22 years, Gold Bond Building Products, allegedly because he had difficulty getting along with his peers. Grohs filed an age discrimination suit.

A bench trial was held in district court. Judge Moran, in an oral ruling from the bench, found that Gold Bond was guilty of a nonwillful violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 et seq ("ADEA").

Both parties appeal; Gold Bond claiming that there was no ADEA violation; and Grohs claiming that the violation was willful. Because there was insufficient evidence to support a finding that age was determinative factor in Grohs' dismissal, we reverse.

I.

Gold Bond, a division of National Gypsum Co., manufactures wallboard at a plant in Waukegan, Illinois. In 1979, Dennis Grohs became the Waukegan board plant superintendent. During the early 1980's the plant suffered a substantial decline in business and a large number of employees were laid off. In February, 1983, the plant was shut down indefinitely retaining only four supervisors to act as custodians of the equipment. This skeletal staff consisted of Dennis Grohs and three others.

Gold Bond reopened the plant on a 90 day trial basis in early 1983. The company's upper management had attributed the plant's earlier problems to a very bad labor relations environment, particularly in terms of the relationship between the supervisors and the hourly employees. Consequently, Gold

Bond decided to implement a new management philosophy with greater emphasis on improving the labor relations atmosphere. because of this new focus, Gold Bond's management viewed a cooperative attitude as a critical element in keeping the plant open afer the trial period.

Michael Ward, the new plant manager, was assigned to reopen the plant, to improve employee relations, and to begin operating successfully within 90 days. He began by reviewing the performance records of the four members of the plant's skeletal crew. Ward's review of Dennis Grohs' was three written evaluations re-

(1285) vealed that Grohs had experienced significant problems with labor relations.

In addition to the written record, Ward was provided with information concerning Grohs by other individuals from Gold Bond's management. Included among these were reports that Grohs had been a "disaster" in terms of his labor relations with the employees in his role as plant board superintendent. The former plant manager, Tom Brooks, informed Ward that Becky Parkman, the personnel safety supervisor, had complained that Grohs had pulled her on to his lap and grabbed her by the crotch during a supervisor's dinner and that later Grohs spoke of Parkman and another female employee as lesbians. Brooks also relayed information to Ward from Darlene Ramig, the payroll sec-

retary, to the effect that Grohs had told her that he would help her get promoted if she would go to a nearby motel with him.

Jon Roth, the former union president, told Ward that Grohs was "the root cause of most labor management problems at the plant and that the union had repeatedly complained to management about Grohs' actions". Roth also told Ward that black employees were outraged by Grohs' racist references to them as "nigger" and "boy".

After receiving these reports of Grohs' conduct 1/ from both Roth and Brooks, reviewing Grohs' file, and personally observing Grohs, Ward decided that Dennis Grohs' did not have the new "cooperative attitude" that Gold Bond needed for the 90 day trial period. Consequently, on April 29, 1983, Ward concluded that Grohs was not qualified

to remain in his supervisory position and discharged Grohs. 2/ not serve as a security guard.

Grohs filed an age discrimination suit pursuant to 29 U.S.C. 636. A bench trial was held before Judge Moran who determined that Grohs successfully established a prima facie case of age discrimination and that Gold Bond's articulated nondiscriminatory reasons for the discharge were manufactured. The judge made a factual determination that Gold Bond had created a "laundry list" or "pretext list" to justify Grohs' dismissal. 3/ Both parties appeal to this court.

1/The company had other complaints concerning Grohs' conduct, that he "fondled genitals in a lewed and public manner" in front of female employees, that he circulated personal rumors among the plant, that employees sabotaged equip-

II.

This court has held that the critical issue in age discrimination suits is not whether age was the sole factor, but rather, whether age was a "determining" factor, in that plaintiff would not have been discharged but for his age. La Montagne v. American Convenience Prods.,Inc, 750 F.2d 1405, 1409 (7th Cir.1984); Kier v. Commercial Union Ins.Co., 806 F. 2d 1254, 1257 (7th Cir.1987) cert denied, U.S. 107 S. Ct.1965 It was Grohs' burden of proof to "show" that he was dis-

ment as a way of getting back at Grohs.

2/ Gold Bond assigned Grohs to a position as security guard five or six days before his discharge. After he was discharged as a supervisor, Grohs did not serve as security guard.

crimated against because of his age. Golomb v. Prudential Ins. Co. of North Am., 688 F.2d 547, 550 (7th Cir., 1982) (emphasis in original). [1]The plaintiff may meet his burden of persuasion at trial in one of two ways. First, he may meet it directly, by presenting direct or circumstantial evidence that age was a determining factor in his discharge. Mathewson v. National Automatic Tool Co., 807 F2d 87, 89-90. (7th Cir. 1986) La Montagne, 750 F. 2d at 1409. Second, he may meet it in directly by utilizing a variation of the Supreme Court's burden-shifting analysis for resolving Title VII cases. This analysis was first set forth in McDonnell Douglas Corp v. Green, 411...

(1286) U. s. 792, 98 S. Ct. 1817, 36 L.Ed.2d 668 (1973), and elaborated and clarified in Texas Dept. of Community Affairs v. Burdin, 450 U.S. 248, 253-56, 101 S. Ct. 1089, 1093-95, 67 L. Ed.2d 207 (1981). This analysis as applied to ADEA cases requires that a plaintiff who files an ADEA claim must show that he:

(1) belongs to the protected class (age forty or older);

(2) was qualified for his position;

(3) was terminated, and

(4) was replaced by a younger person. Metz v. Transit Mix, Inc., 828 F.2d 1202, 1204 (7th Cir. 1987). When a plaintiff establishes these criteria, he has made a prima facie case of age discrimination and burden shifts to the

3/ The charges Gold Bond made against Grohs were largely complaints about his personality and lack of ability to get

along with others and ranged from scratching his crotch to using words like "nigger" and "boy" to refer to workers. There was testimony during the trial that Grohs was hated by the hourly employees and that various female employees had accused Grohs of sexual harassment.

defendant to show that plaintiff's discharge was a result of "some legitimate, nondiscriminatory reason." If the defendant meets this challenge, the burden again shifts to the plaintiff to prove that the reasons for the discharge were merely a pretext for discrimination. McDonnell, 411 U.S.at 802-05, 93 S. Ct. at 1824-25 Graefenhain v.Pabst Brewing Co.,827 F.2d 13, 17-18 (7th Cir. 1987).Bechold v.IGW Sys. 817 F. 2d 1282, 1284 (7th Cir 1987) La Montagne, 750 F. 2nd at 1409 Metz, 828 F. 2d at 1204.

Once the case has been tried, however the rules about the prima facie case, defendant's response and methods of proof no longer are relevant. The remaining issue is whether there was sufficient evidence to support a finding that age was a determinative factor in defendant's dismissal of the plaintiff.

Kier,808 F. 2nd at 1257; accord United States Postal Service Bd. of Governors v. Aikens, 460 U.S.711, 715, 108 S. Ct. 1478, 1482,75L. Ed 2d 403 (1983) Pollard v. Rea Magnet Wire Co. 824 F. 2d 557, 558 (7th Cir. 1987) cert denied -U.S.-,106 S.Ct. 488, 96 L. Ed 2d 486 (1987) (Title VII) Benzies v. Illinois Dept. of Mental Health, 810 F. 2d 146, 148 (7th Cir, 1987). cert denied, -U.S.- 107 S.Ct. 3231, 97 L.Ed 2d. 737 (1987) (Title VII) Mathewson, 807 F.2d at 90 (ADEA); Morgan v. South Bend Comm. School Corp. 797 F.2nd. 471, 480 (7th Cir 1986) (Title VII.) To do this, the plaintiff must show that defendant's proffered reasons for discharge were pretextual.He must demonstrate that (1) the proffered reasons had no basis in fact, (2) the proffered reasons did not actually motivate his discharge, or (3) that they were insufficient to motivate discharge.

Kier, 808 F. 2nd at 1259.

In examining the district court's findings, we operate under the clearly erroneous standard of review. Anderson v. City of Bessemer City, 470 U.S. 564, 572, 105, S.Ct 1504,84 L. Ed 2d 518 (1985) Bechold, 817 F. 2d. at 1285.

III.

The district judge made a factual finding that Dennis Grohs was a "good, strong performer, and he was terminated." The judge indicated that he was "persuaded that age was a factor" in Grohs' termination, characterizing Gold Bond's reasons for Grohs' discharge as"a whole laundry list of irrelevancies." He stated that management's desire for "softer" supervision was a factor related to Grohs' age with the sense that... he is too old." In his oral ruling the judge said:

> There was a feeling that plaintiff was expendable, and it didn't make any difference that he had been there for more than 20 years. They didn't choose to try to to teach an old dog new tricks Management did want a little softer supervision. So that was a factor, but it was a factor related to the plaintiff's age in the sense of they were, in effect saying: and we're not going to take a chance with him. He has been set in his ways too long, he is too old, and he is expendable.]

On the othere hand, the district judge also found that Gold Bond had adopted a new 90-day strategy in an attempt to "do or die," and that the company wanted decertification of its union and improved labor relations. The court found that Grohs' personality did not fit with the "new" image or stratedgy of the "new" company. Grohs' supervisory style was that of a "head knocker," the court said. "[S]troking [the work force] wasn't," the court conceded, "one of plain-

tiff's strong points." Gold Bond claims that these findings were not

(1287) consistent with a finding of age discrimination.

In support of that claim, Gold Bond first alleges that there was no direct evidence of discrimination. We find this to be true. Plaintiff's proffered direct evidence was the testimony of Robert Spitz, Vice President of Operations, instructed Ward to fire Grohs because he was "too old and too fat for the job." The opinion of the district court explicitly discredited this testimony. "I thought to myself." the district judge said, "I think Mr. Sarvis is verbalizing something that he thought back at the time all this happened in 1983" (emphasis added). The district judge opined that "Sarvis leaned on [Ward] a little bit to get rid of Grohs." Plaintiff improperly characterizes this as a finding by the district court that Sarvis himself was

the discriminator. This contention, however, has absolutely no support in the record.

Nor is there any indirect evidence that age was a dertermining factor in Gold Bond's decision to terminate Grohs' employment. The district court characterized Gold Bond's reasons for discharging Grohs as a "laundry list" and a pretext list." It appears to have done so in part because all of the instances of Grohs' behavior of which the company received complaints occurred two and three years before Grohs' employment was terminated. We recognize that "evidence that the proffered reason for the discharge was something so far removed in time from the discharge itself that it is unlikely to have been the whole cause, even if a part of it," La Montagne 750 F.2d at

1415, can constitute evidence that such proffered reasons are not the sole determining factors. The Gold Bond plant, however, had been shut down since February, 1982. The company had implemented new supervisory standards, requiring skill in labor relations, for the 90-day trial period. Thus, it was necessary to reevaluate the supervisory staff in light of these new standards. The most recent information regarding Grohs' supervisory performance that was available was information dating from 1980 and 1981.

[2] Gold Bond argues as well that even though Grohs formerly was qualified for his position, despite his deficient labor relations skills, the adoption of new management policies allowed it to reevaluate Grohs, and dismiss him because he was no longer qualified. We find that this argument has merit.

Whether one is "qualified" for one's job depends upon whether one meets one's employer's legitimate expectations. Dale v. Chicago Tribune Co., 797 F2d 458, 463 (7th Cir.1986), cert. denied, 479 U.S. 1066, 107 S.Ct. 954, 93L. Ed. 2d 1002 (1987); Huhn v. Koehring Co., 718 F. 2d 239, 244 (7th Cir. 1983). The employer's expectations are measured at the time the employee is discharged. Dorsch v. L.B. Foster Co., 782 F.2d 1421, 1425 (7th Cir. 1986). Thus, whether one is qualified may change from time to time. The fact that an individual may have been qualified in the past does not mean that he is qualified at a later time. As we said in Kephart v. Institute of Gas Technology, 630 F. 2d 1217, 1219 (7th Cir. 1980), cert. denied,450 U.S. 959, 101 S. Ct. 1418, 67 L. Ed. 2d 383 (1981):

> Qualification obviously depends on the nature of [the employer's] business at any given time. One year an outgoing business-getter type might be best qualified, while in the next, after the business was got, it might be a cloistered scientist, or mathematician. To ignore the shifting nature of qualification from time to time would make the qualification requirement [in plaintiff's prima facie case] meaningless...

[3] Thus, although Grohs' performance as a supervisor was adequate in the past, Gold Bond's new emphasis on labor management relations during the 90-day trial period meant that Gold Bond could find that Grohs was no longer qualified and discharge him. See Jang v. Biltmore Tire Co., 797 F. 2d 486, 489-90 (7th Cir. 1986) (fact that plaintiff was qualified in the past did not rebut defendant's explanation that plaintiff lacked specific qualifications necessary to fulfill the changing job description; hence, no ADEA violation occurred).

(1288)Here, the district court found that Gold Bond wanted to implement a "softer" management style at the Waukegan plant. It also found that Grohs' supervisory approach was that of a "head knocker." The district judge stated that "I do believe that because of the immediate objective [of improving labor-management relations]. the fact that plaintiff was one kind of supervisor... which was not totally what [Gold Bond] had in mind during the immediate future at Waukegan, that that was a factor [in Grohs' dismissal]." In the past, we have held that lack of ability to get along with others, with employees in particular, was a legitimate, nondiscriminatory reason for terminiating someone's employment. See, e.g., La Montagne, 750 F 2d at 1414 (plaintiff's problems communicating with his superior

created divisiveness among employees); Parker v. Federal Nat'l Mortgage Ass'n, 741 F. 2d 975, 979 (7th Cir. 1984) (plaintiff was "not personable, ordinarily a shortcoming for one in a supervisory position").

Thus, as long as Ward's belief that Grohs was not qualified to continue in a supervisory position with Gold Bond was genuinely held, it is not, by definition, a pretext for firing Grohs on account of his age. Pollard, 824 F. 2d at 559, Bechold, 817 F. 2d at 1285 (when an employer advances a reason unrelated to a characteristic covered by the statute, the issue "becomes one of credibility in determining whether the belief is genuinely held"); Dorsch, 782 F. 2d at 1426. As noted above the district judge found that Grohs' management style was not, "what [Gold Bond] had in mind," that it wanted a

"softer"style of supervision, and that Grohs' supervisory style was rather that of a "head knocker."

There is, moreover, insufficient evidence showing age discrimination to the contrary. Employment discrimination cases often involve sensitive and difficult issues of fact. Aikens, 460 U.S. at 716, 102 S.Ct. at 1482. The evidence of discriminatory intent in this case was sparse. Therefore, it is not surprising that the district judge's oral findings of fact simply do not reflect evidence of age discrimination. There is insufficient proof of disparate treatment, especially in light of the fact that Ward is only three years younger than Grohs, one of the new supervisors is merely five years younger, one is fifteeen years younger, and the third is actually two years older. 4/ Although Ward's deposition

testimony indicates that he thought Grohs was 54, not 51, at the time he was terminated, it thus seems unlikely that Ward thought someone even six years his seniour was too old. It is true that Jon Roth, who was 43 at the time was hired in spite of his people problems. As plaintiff points out in his brief, however, Roth was hired as a supervisor because he was the union president. In supervisory capacity, Roth could not act on behalf of the union, and the company would have an easier time achieveing decertification. This is consistent with Gold Bond's new 90-day strategy, rather than constituting evidence of age discrimination. 5/

Thus, we find that age was not a determinative factor in Gold Bond's decision to terminate Grohs. Grohs was

fired because he was no longer qualified for his position under the new management style. The decision to terminate Grohs under these criteria had a basis in fact, because the district judge found that his lack of supervisory abilities was a factor in his dismissal. Even if the allegations about Grohs

4/ At the time he terminated Grohs, Michael Ward was 48 years old, three years younger than Dennis Grohs. The three men who were hired as new supervisors, after Grohs' dismissal, were aged 36, 43, and 53.

5/ Gold Bond conjectures that the district court's holding was based on a subjective feeling that Grohs was not terminated for just cause. By speculating that this simply was a case of the company refusing to "teach an old dog new tricks," the district court, Gold Bond argues, was improperly substituting its own standards of fairness and business judgment for that of the defendant. It is true, of course, that the ADEA "was not intended as a vehicle for judicial review of business decisions." Kephart, 630 F. 2nd at 1223. We also have said that "it is not the court's duty to determine the validity of the defendant's business decision as long as the decision was made in good faith." Dorsch, 782 F. 2d at 1426.

were not true. Ward genuinely believed that they were. Lack of supervisory skills is, as discussed above, sufficient to motivate the discharge of an employee. Here, there is little or no direct or indirect evidence that Grohs' discharge was brought about by any concerns other than his ability to supervise employees in a "softer" manner.

It is the task of the apellate court to "determine whether the trial judge's interpretation of the facts is implausible, illogical, internally inconsistent or contradicted by documentary or other extrinsic evidence." Ratliff v. Milwaukee, 795 F. 2d 612, 617 (7th Cir. 1986). Gold Bond claims that the district court's characterization of the company's stated reasons for dismissing Grohs as a "pretext list" does not fit with the

court's other findings. The trial court incongruously made factual findings that Grohs' supervisory style was that of a "head knocker" and that Gold Bond had adopted new "softer supervision" policies to which Grohs did not conform. Oral findings by any judge may sometimes be internally inconsistent. We find that to be the case here. In some cases such inconsistencies may be reconciled on appeal. Here, however, the lack of evidence makes such reconciliation impossible. Thus, based on the district court's contradictory findings, the determination that Gold Bond's termination of Grohs was a result of age discrimination and not based on legitimate business reasons, was clearly erroneous.

IV.

Grohs requests this court to find that the age discrimination was a willful violation of the ADEA. Grohs contends that there was sufficient evidence in the record to support this finding, and that the court erred by neglecting to charactearize Gold Bond's misconduct as willful.

Because we find that Gold Bond did not violate the ADEA, we need not address the issue of whether that alleged violation should have been characterized as willful or nonwillful.

V.

The evidence in the record is insufficient to find that age was a determinative factor in plaintiff's dismissal, constituting a violation of the ADEA. We therefore Reverse.

DEFENDANTS STATEMENT OF FACTS

Gold Bond, a division of National Gypsum Company, operates a plant in Waukegan, Illinois, which manufactures wallboard (Ward, Tr. 140; Grohs, Tr. 311). Grohs became the plant's board plant superintendent in 1979 (Grohs, Tr. 309).

In the early 1980's, the Waukegan plant underwent a substantial decline in business (App. at 2). In October, 1981, the Company laid off a large number of hourly and salaried employees (Lynch, Tr. 96; Coventry, Tr. 239-40). The downturn continued, however, and in February, 1982, the Company shut the plant down indefinitely (Lynch, Tr. 92,92, 104). It retained a skeletal staff of four supervisors, including Grohs, to act as custodians of the equipment (Lynch, Tr. 94-95). The

Waukegan plant manager, Thomas Brooks, transferred to the Company's Phoenix, Arizona plant (Lynch, Tr. 90, 97; Ward, Tr. 182).

In early 1983, the Company reopened the Waukegan plant on a 90-day trial operation (Lynch, Tr. 81, 102; Ward, Tr. 144, 202-03). Upper management determined that the earlier failure of the plant to operate successfully had resulted in large part from exceedingly poor relations between management and hourly employees (App. at 2; Lynch, Tr. 81-81; Ward, Tr. 203; see also Roth, Tr. 405-06). Thus, management decided that if, within the 90-day trial period, the reopening of the plant could be accomplished under an employee relations atmosphere conducive to profitability, it would remain open (App. at 2). The decision was made, therefore, to

implement a new management phillosophy which would place great emphasis on improving the labor relations atmosphere at the plant, including more harmonious relations between supervisors and employees and the creation of a working environment in which the workforce would take steps to decertify its union (Sarvis, Tr. 43-45; Lynch, Tr. 86-88; Bavis, Tr. 127-128; Ward, Tr. 202-03, 210; Def. Ex. 15). If the experiment did not work, Gold Bond was going to shut the plant down permanently (Ward, Tr. 202-03).

The Company named Michael Ward, then age 48, as the new plant manager (Lynch, Tr. 91; Ward, Tr. 139). Ward had been with the Company for 27 years, most recently as the Phoenix plant production superintendent (Ward, Tr. 139-41, 204). Robert Sarvis, then Director of Manufacturing and Ward's immediate supervisor, specifically instructed Ward that he had only 90 days to begin operating the plant successfully (Sarvis, Tr. 43-45; Ward, Tr. 202-03). Ward was told that he was to place great importance on improving employee relations (Sarvis, Tr. 43-45; Ward, Tr. 203).

Shortly before taking over as plant manager, Ward asked Brooks (the former plant manager) for his thoughts about the strengths and weaknesses of the employees (Ward, Tr. 205). Brooks advised Ward that Grohs had a great many

problems dealing with plant employees, and was disliked -- even hated -- by most of the hourly employees (Ward, Tr. 207). Brooks also cited complaints from female employees that they had been sexually harassed by Grohs. Becky Parkman, the personnel safety supervisor, had told Brooks that Grohs had grabbed her by the crotch during a supervisors' dinner and, a few months later, referred to her and another employee as lesbians (Ward, Tr. 206). Brooks also said he had been told by Darlene Ramig, the payroll secretary, that Grohs had suggested he would help her get promoted if she went to a nearby motel with him (Ward, Tr. 207). 1/ Upon arriving at the Waukegan plant in April, 1983, Wards reviewed the recent performance apraisals of the four remaining employees (Ward, Tr. 212-13).

Each of Grohs' last three appraisals ranked him low in the area of employee relations (Def. Exs. 1-3; Ward, Tr. 213-14). 2/

1/ Parkman independently confirmed these incidents when questioned by Ward (Ward, Tr. 214-17). Ramig confirmed these incidents involving her in her testimony (Ramig, Tr. 433-38).

2/ Plaintiff's 1980 appraisal describes him as "weak in labor relations" (Def. Ex. 1), his 1981 appraisal notes that he had "improved in labor relations but still needs to work on developing a little more finesse" (Def. Ex. 2), and his 1982 appraisal states, under the category "Labor Relations": "Was not very strong. Employees did not accept him. Needs to use more finesse in handling people." This last appraisal also states: "Dennis should attend a Human Relations Seminar. Needs to develop ability to relate to his employees on a more understanding level.
Does not have a strong working relationship with some of his peers" (Def. Ex. 3) See also (Coventry, Tr. 261-62, 269).

Jon Roth, who had been the union president at the Waukegan plant for 20 years, told Ward that the rank-and-file employees "hated" Grohs, that he was the root cause of most labor-management problems at the plant, and that the union had repeatedly complained to management about Grohs' actions (Ward, Tr. 217-20; Roth, lTr. 405, 413, 415). 3/ In addition, Ward received information from Roth that black employees had been outraged by Grohs' racist references to them as "nigger" and "boy" (Ward, Tr. 219; Roth, Tr. 408-11, 415). On another occasion, an employee has asked Grohs for time off to take care of a sick child, and Grohs had told the employee it was "your goddamn problem" (Ward, Tr. 219-20).

3/ Thomas Lynch, the Company's labor relations attorney, likewise told Ward that during the most recent negotations with the union in 1981, Roth and other union negotiators had specifically

complained to management about Grohs. The union negotiators named Grohs as the primary offender in not caring about the employees (Lynch, Tr. 118-19; Ward, Tr. 177-0178, 220; Roth, Tr. 411-13). Sarvis also cautioned Ward about Grohs (Ward, Tr. 208-09).

Given the strict time constraints he was working under, the specific directive to create a harmonious employee relations environment, the virtual flood of negative information regarding Grohs' weakness in that area, and his own observations, Ward concluded that Grohs' continued employment would endanger the success of the 90-day trial period, thereby threatening the continued existence of the Waukegan operations. He decided, therefore, to discharge Grohs (Ward, Tr. 154-155, 220-21).

On April 29, 1983, Ward and Thomas Lynch, the Company's labor relations attorney (who was at the plant on other business), met with Grohs to inform him that he was being discharged. Ward explained to Grohs that he was being discharged for his

"people problems" with both the hourly employees and his peers, and that due to Grohs' inability to handle people, he could not fit in with the Company's new emphasis on improved employee relations (Lynch, Tr. 119-21; Ward, Tr. 170-71, 222-23; Def. Ex. 4).

As the start-up progressed, Ward hired Roth, age 43, Junior Henkel, age 53, and Herman Fraley, age 36, as new supervisors (Ward, Tr. 192-93, 224; Roth, Tr. 404-05).

SUMMARY OF ARGUMENT

In its ruling, the district court rejected all of plaintiff's alleged direct evidence of age discrimination, finding plaintiff's witness on these facts to be incredible (Appendix at 5-6). Accordingly, the district court based its decision on indirect evidence under the shifting burdens set forth in McDonnel Douglas Corp. v. Green, 411 U.S. 792 (1973). The district court

erred in finding (1) that plaintiff met his burden of establishing a prima facie case of discrimination; and (2) that defendant's articulated nondiscriminatory reason for the discharge was pretextual.

In its findings of fact the district court accepted as completely true that Gold Bond had instituted new standards of conduct for its supervisors when it decided to reopen the Waukegan plant for a 90-day sink or swim trial period in 1983. The district court found that the company wanted "softer supervision" (App. at 11) which " ...wouldn't upset the hourly employees..."(App. at 6).

In addition, the district court found that the plaintiff's supervisory style was that of a "head knocker" (App. at 4) and that "stroking" the workforce"... wasn't one of plaintiff's

erred in finding (1) that plaintiff met his burden of establishing a prima facie case of discrimination; and (2) that defendant's articulated nondiscriminatory reason for the discharge was pretextual.

In its findings of fact the district court accepted as completely true that Gold Bond had instituted new standards of conduct for its supervisors when it decided to reopen the Waukegan plant for a 90-day sink or swim trial period in 1983. The district court found that the company wanted "softer supervision" (App. at 11) which " ...wouldn't upset the hourly employees..."(App. at 6).

In addition, the district court found that the plaintiff's supervisory style was that of a "head knocker" (App. at 4) and that "stroking" the workforce"... wasn't one of plaintiff's

strong points" (App. at 6).4/ Indeed, the district court specifically found that Grohs' supervisory history demonstrated to the new plant manager at Waukegan that

4/The district court's findings of fact also characterized Groh's supervisory style as being"...quite clearly strict; not terribly flexible" (App. at 4). Grohs was, in district court's view, "a tough boss" (App. at 4).

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

September 29, 1988

Before

Hon. Richard A. Posner, Circuit Judge

Hon. Joel M. Flaum, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

Dennis Grohs,

Plaintiff-Appellee,

Cross-Appellant.

No. 87-1527 and

87-1568

v.

Gold Bond Building Products,

A division of National Gypsum

Company,

Defendant-Appellant.

Cross-Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 84 C 7999

James B. Moran, Judge.

ORDER

The slip opinion published in the above-entitled case on September 27, 1988 is hereby amended as follows:

Page 9, first full paragraph, line 10, the word "by" should be deleted.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

November 2, 1988

Before

Hon. Richard A. Posner, Circuit Judge

Hon. Joel M. Flaum, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

Dennis Grohs,

Plaintiff-Appellee,

Cross-Appellant,

Nos. 87-1527 and

87-1568

v.

Gold Bond Building Products,

A division of National Gypsum Company,

Defendant-Appellant,

Cross-Appellee.

Appeals from the United States District court for the Northern District of Illinois.

No. 84 C 7999

James B. Moran, Judge.

ORDER

On consideration of the petition for rehearing and suggestion for rehearing en banc filed in the above-entitled cause, no judge in active service has requested a vote thereon and all of the judges on the original panel have voted to deny the petition for rehearing. Accordingly,

It is ordered that the aforesaid petition for rehearing and suggestion for rehearing en banc be, and the same are, hereby Denied.

It is further ordered that the opinion issued in this case on September 27, 1988, is hereby Amended to reflect the following corrections:

(1) On page 2, the first line in the first full paragraph, the word "John" is changed to "Jon."

(2) On page 7, twelfth line in the first full paragraph, the word "Spitz]" is changed to "[Ward]".

(continued)

(3) On page 10, first line of the first paragraph, the balance of the paragraph commencing with the word "It" is deleted and the following is added:

Although Ward's deposition testimony indicates that he thought Grohs was 54, not 51, at the time he was terminated, it thus seems unlikely that Ward thought someone even six years his senior was too old. It is true that Jon Roth, who was 43 at the time, was hired in spite of his people problems. As plaintiff points out in his brief, however, Roth was hired as a supervisor because he was the union president. In a supervisory capacity, Roth could not act on behalf of the union, and the company would have an easier time

achieving decertification. This is consistent with Gold Bond's new 90-day strategy, rather than constituting evidence of age discrimination. 5

July 19, 1983

Mr. Jose' D. Rodriguez
Equal Opportunity Specialist
Equal Employment Opportunity
Commission
536 South Clark Street, Room 234
Chicago, IL 60085

Re: Grohs v. Gold Bond Building
Products,
EEOC Charge No. 051 83 3359

Dear Mr. Rodriguez:

This letter is in response to the above-referenced charge and your questionnaire regarding the charge. I am confident that your investigation will lead you to conclude the Mr. Grohs' discharge was in no way based on his age, and that the Respondent has not discriminated against him in any unlawful manner.

The Waukegan plant of Gold Bond Building Products manufactures gypsum

wallboard and related products for use in the building industry. The depressed economic conditions in the building industry in the early 1980's were especially felt by the Waukegan plant, and in October 1981, required the company to make substantial cutbacks in production schedules and personnel levels at its Waukegan plant. Accordingly, the following supervisors were laid off in October 1981:

1. Walter Daniels (Age 38)
2. George Ester (Age 38)
3. Jessie Jones (Age 48)
4. Larry Manuel (Age 59)
5. Orlin Ree (Age 44)
6. Keith Totsch (Age 44)

These layoffs were made on the basis of job performance and versatility, and were made without regard to the age or seniority of the individuals

involved.

Despite these cutbacks, the Waukegan plant was unable to maintain a profitable position. Accordingly, in January 1982, the company decided to indefinately curtail production at its Waukegan operation. All hourly personnel were laid off at this time, while the supervisory staff served as custodians of a shut-down facility.

During the spring of 1983, the company decided to restart the Waukegan operation. Before doing so, however, it analyzed the factors responsible for the plant's nonprofitability prior to the closing. It concluded that poor personnel practices and labor relations policies were largely responsible for the gradual deterioration of the plant. It therefore decided that a new attitude and approach in personnel matters and employee relations would be necessary if the plant were to be run in a profitalble manner. Mike Ward was then assigned as the new plant manager to undertake this challange.

Mike carefully reviewed the performance apprailsals and anecdotal information regarding all his supervisors as he prepared for the start-up. He was especially

concerned that Mr. Grohs' 1981 and 1982 performance appraisals indicated deficiencies in labor relations and personnel matters -- areas that would be critical to the success of the new operation. He then investigated Mr. Grohs' work record and learned of the following:

1. During the 1981 labor

negotiations with the United Cement, Lime, Gypsum and Allied Workers International Union, Local 409, the bargaining committee consistently complained about Mr. Grohs' inability to deal with people.

2. On several occasions, Mr. Grohs sought to undermine his peers by

spreading false rumors regarding stealing by another supervisor, as well as heterosexual and homosexual relationships of supervisory employees.

3. Two complaints were made regarding sexual harassment by Mr. Grohs, including verbal and physical harassment, and the creation of a sexually intimidating atmosphere at staff metings.

4. Mr. Grohs indicated to the previous plant manager that he would "step on" anyone who tried to get in his career path, a statement hardly indicative of a good relationship with peers.

Based on these demonstrated inadequacies in the key area of personnel relations, Mike Ward determined that Mr. Grohs could not be an effective member of the new

Waukegan team. He therefore terminatd Mr. Grohs on April 29, 1983, and replaced him with Jon Roth (age 43).

Despite Mr. Grohs' inadequacies the company wanted to make Mr. Grohs' separation from the company as amicable as possible. At Mr. Grohs' termination meeting, the company indicated it would be willing to treat the separation as a resignation rather than termination, and would offer help in the areas of:

1) severance pay
2) Job placement
3) health insurance benefits

Needless to say, Mr. Grohs would also receive his vested pension benefits in accordance with the company's pension plan for salaried employees.

While the company has not discriminated against Mr. Grohs in any unlawful manner, it remains willing to offer assistance in the above areas in

recognition of Mr. Grohs' long service to the company. I am confident that the efforts of Mr. Grohs and the company will enable Mr. Grohs to obtain other employment with no real financial loss. Thus far, Mr. Grohs has declined this assistance from the company.

Please let me know if I can provide you with further information to assist in your investigation of this matter.

Very truly yours,

Gold Bond Building Products
Division of National Gypsum Co.
Thomas J. Lynch
Labor Relations Attorney

December 7, 1983

Mr. Jose D. Rodriquez
Equal Opportunity Specialist
Equal Employment Opportunity
Commission
536 South Clark Street
Chicago, IL 60685

RE: Grohs v. Gold Bond Building Products, EEOC Charge No. 051 83 3359

Dear Mr. Rodriguez:

This letter is in response to your request for additional information in your investigation of the above-referenced charge. I have reviewed the information you requested, and hope this letter will assist you in concluding your investigation.

I am sure your analysis of the facts will demonstrate to your satisfaction that the performance appraisals of the supervisors who were laid off in Oct-

ober, 1981 has no relevance in showing whether Mr. Grohs was discriminated against because of his age. Since Mr. Grohs was retained after the 1981 layoff, the reasons other individuals were laid off can have no bearing on why Mr. Grohs was subsequently terminated. The information certainly cannot support a statistical showing of age discrimination in the other employment decisions since the statistical analysis of the 1981 layoff does not make a prima facie showing of age discrimination. Little purpose would therefore be served by considering the myriad reasons why certain individuals were laid off in 1981.

During the 1981 labor negotiations, Jon Roth, president of the local union and spokesperson of the Waukegan employees, complained

on several occasions about Mr. Grohs' inability to deal with people in an understanding manner. Present at these negotiations were Thomas Brooks, Thomas Lynch, Rebecca Parkman, Wallace Behrens, Thomas Tomasiewicz, Diana Cuna and Charles Huntbach.

On Monday, February 8, 1982, Office Manager Mary Ann Seigel spoke with Plant Manager Thomas Brooks about several rumors Mr. Grohs had been circulating about his peers. Mr. Grohs had alleged there were sexual relationships between Rebecca Parkman and Donna Bittner, between Rebecca Parkman and Thomas Brooks, and between Rebecca Parkman and Thomas Lynch. Mr. Grohs had also stated that Robert Cudsworth had been accepting bribes as maintenance superintendent. Mr. Grohs had previously told Production

Superintendent Robert Coventry that there was also a sexual relationship between Thomas Brooks and Jessica Elrod. Since this matter may well end up in litigation, I would rather not provide you with affidavits at this time regarding these occurrences.

On several occasions, Thomas Brooks reprimanded Mr. Grohs for sexually harassing salaried female employees. During the summer of 1981, Mr. Grohs asked Darlene Ramig, a married female employee, to adjourn to a local motel with him after a supervisors' dinner. At another supervisors' dinner, Mr. Grohs attacked Rebecca Parkman by pulling her to his lap and grabbing her between the legs. In June of 1981, during a business trip to Kalamazoo, Michigan with Thomas Brooks and Rebecca Parkman, Mr. Grohs attempted to harass Ms. Parkman in a sexually offensive manner by telling a

male patron at a hotel bar to go to Ms. Parkman's room for sexual favors. Finally, in the presence of Ms. Parkman and Ms. Seigel at salaried staff meetings, and in the presence of females in the office area. Mr. Grohs would create a sexually offensive atmosphere by fondling his genitals in a lewd and public manner. No written complaints were filed protesting these instances of sexual harassment.

Jon Roth was an hourly employee until the start-up of of the Waukegan plant in 1983. Since no performance appraisals are completed for hourly employees, there are no written appraisals of Mr. Roth's performance.

The company did not immediately fill the position of board plant superintendent that was held by Mr. Grohs. Immediately after Mr. Grohs' termination, the job duties were performed by Plant Manager

Michael Ward, who is 48 years old. On September 1, 1983,

December 7, 1983

Herman Fraley, age 34, was appointed board plant superintendent.

I hope this information will be helpful in your investigation. If you need any additional relevant information, please let me know.

Very truly yours,

Gold Bond Building Products
Division of National Gypsum Company
Thomas J. Lynch
Labor Relations Attorney

National Gypsum Company

Performance Appraisal Report

Name: Dennis H. Grohs

Position: Dept Supt B - (Mill)

Division: G.B.B.P.

Anniversary Review Date: 10-01-79

Reports to Prod. Supt.

Immediate Superior's appraisal of incumbent's overall performance against established objectives:

Check one:

Distinguished

Outstanding performance clearly obvious to all.

Commendable

Performance noticeably better than "Acceptable."

Acceptable X

Performance expected of a fully competent, seasoned employee.

Fair

Performance where need for further

development is recognizable.

Marginal

Provisional for inexperienced newcomers and others whose performance is below acceptable levels.

Comments:

SAFETY - Two lost time accidents in Mill in 1978-None to date in 1979,-very safety conscious superintendent.

QUALITY - Dennis is very alert to quality problems, both in - process and finished product. Quality complaints on plaster in 1978-11.

LABOR RELATIONS - Very professional in his approach to personnel. No greivances in 1978- No 1979. Very strong in this area.

HOUSEKEEPING - Better than average.

productivity and costs;

PRODUCTIVITY AND COSTS; Costs in

Performance Appraisal 10/16/79

Dennis area of responsibility are well below standard. Stucco costs for 78'-$.422 US. sTD of 585. 79'-$.528 US standard of .493 these 79' costs reflect very severe operating conditions in early 79' due to weather.

GENERAL - Dennis handles the management of his department with very little direction. Very aggressive, sets goals and strives to meet them. Dennis is ready for a greater chalenge

I have read and understand the above, Dennis Grohs 10-1679

B.B. Bowers 10-16-79

Note: "comments" are required on all performance appraisal reports. Appraisals of "Distinguished" or "Commendable" must be substantiated in detail.

Comments of appraiser's Superior:

-A33c_

Performance Appraisal 10/16/79

Dennis Dennis has been a consistent and strong mill supt. and is capable of handling, a broader area of responsibility

Robert Coventry

Officer's Signature Beck 10/31/79

NATIONAL GYPSUM COMPANY

PERFORMANCE APPRAISAL REPORT

Name: Dennis H. Grohs

Position: Dept. Supt;. C - Waukegan

Supervision: G.B.B.P.

Anniversary Review Date:

October 1979

Reports to: Prod Supt.

Immediate Superior's appraisal of incumbent's overall performance against established objectives:

Check One:

Distinguished

Outstanding performance clearly obvious to all.

Commendble

Performance noticeable better then "Acceptable,"

Acceptable X

Performance expected of a full competent, seasoned employee.

Fair

Performance Appraisal 8/1/79

Performance where need for further development is recognizable.

Marginal

Provisional for inexperienced newcomers and others whose performance is below acceptable levels.

Comments: See attached

Robt. Coventry 8/1/79

Note: "Comments" are required on all performance Appraisal Reports. Appraislas "Distinguished" or "Commendable" must be substantiated in detail.

Comments of Appraiser's Superior: Dennis is in my opinion, the backbone of supervisory force at Waukegan. The only stabilizing member of the group. I rate him very highly 8/25/79

Officer's Signature-Byron B. Bowers

Performance Appraisal 8/1/79

SAFETY - There were two lost time accidents in the mill in 1978. To date in 1979 there has been one medical case but no lost time injuries.

QUALITY - Dennis is very alert to variations in quality of both in process and finished products. Quality complaints for 1978 totalled eleven; complaints to date in 1979 total three.

LABOR RELATIONS - His direction of personnel is both professional and concerned resulting in an organization that will give extra effort as needed. There were no grievances in 1978 or to date in 1979.

HOUSEKEEPING - In most areas housekeeping is better than average with only a few chronically poor spots.

Performance Appraisal 8/1/79

PRODUCTIVITY AND COSTS - Direct labor costs for land plaster and stucco for 1978 were $.388 and $.422 vs. standard costs of $.585 and $.557. Through June of 1979 these actual costs were $.$.484 and $.528 vs. standard costs of $.412 and $.493. The 1979 to date actual costs reflect severe operating conditions occurring early in the year which are being offset by recent months' costs being well below standard.

GENERAL - Dennis handles the full scope of management of his department very well and is less depencent on outside assistance than average. He is quite aggressive in reaching his goals and is willing to contribute his knowledge or experiences in other areas of the plant.

I have read and understand the above

Dennis Grohs

Date 8-1-79

NATIONAL GYPSUM COMPANY

PERFORMANCE APPRAISAL REPORT

Name: Dennis H. Grohs

Position: Department Superintendent B

Location: Waukegan

Anniversary Review Date: October 1980

Reports To: R. A. Coventry

Overall Evaluation

Marginal - Adequate - Competent X

Outstanding - Distinguished

ACCOUNTABLIITY EVALUATION

Identify major job accountabilities (list in order of importance)

1. Maintain cost and wage levels per action plan

2. Provide training per action plan.

3. Insure board quality within specifications

4. Improve mechanical condition of Board plant per action plan.

Measurement of performance: Indicate

Performance Appraisal October 81'

results against accountabilities and objectives, using measures which support employee's performance of each entry (include significant accomplishments. constructive comments on major weak areas). Be specific.

1. Material usage controlled to standard. Labor cost unfavorable due to low efficiency caused by equipment
2. Action plan goals achieved
3. Major general improvements in board quality during year with action taken specific variances from specs.
4. Action plan on schedule plus additional major improvements made beyond scope of plan.

Performance Appraisal Aug. 80'

5. Reduce lost time injuries by one - third

6. Maintain housekeeping at division standards

7. Improve inventory control

5. No lost time injuries in 1980 compared to 12 lost time in 1979

6. Improved over past year variable at time so consistency is needed.

7. Changed procedures and reorganized assignments. Has reduced variance of physical to books by 50%.

R.A. Coventry (Appraiser's Signature)

Prod. Supt. (Title)

8/6/80 (Date)

Note: Comments are required on all Performance Appraisal Reports. Appraisals of Distinguished or Outstanding must be substantiated in detail.

Comments of Appraiser's Superior:

Dennis has worked very hard to

improve board plant performance. He is weak in labor relations but is working to improve in this area. Dennis rating is competent but is very close to Outstanding

Byron B. Bowers

(Signed)

Plant. Mgr. (Title)

8/8/80 (Date)

Concluding remarks: Comment on corrective action or areas for development, if applicable.

(No comment)

This analysis has been discussed with me. Employee's signature

Dennis Grohs

Date 8/6/80

Employee Comments: (no Comments)

NATIONAL GYPSUM COMPANY

PERFORMANCE APPRAISAL REPORT

Name: Dennis Grohs

Position: Board Plant Super. (B).

Location: Waukegan Plant

Anniversary Review Date: Oct. 1981

Reports To: Robert A. Coventry

Overall Evaluation

Marginal - Adequate - CompetentXX

Outstanding - Distinguished

ACCOUNTABILITY EVALUATION

Identify major job accountabilities

(List in Order of importance)

1. Maintain costs at Standard.

2. Improve mechanical condition of Department.

3. Maintain product quality at acceptable levels.

4. Maintain safety at Division Standard.

Measurement of performance: Indicate results against accountabilities and

objectives, using measures which support employee's performance of each entry (include significant accomplishments. constructive comments on major weak areas). Be specific.

1. Costs through July 1981 indicate all major board produced for less than standard cost.
2. Machine efficiency 1981 to date is 94.3% vs. 90.4% in 1980
3. Quality settlements 1981 to date are $2043 below budget. Sales has expressed satisfaction in March.
4. No lost time accidents, 0 medical injuries.

Performance Apprasail Aug. 81'

5. Improve housekeeping to meet higher standards.

6. Maintain personnel training at all levels.

7. Improve inventory control to higher standard.

5. Painting improved general cleanliness improved but not yet at consistently high level desired.

6. Training progressing at level established by action plan.

7. Successfull reduced raw material in line with objective. Improved system to improve finished board count.

R. Coventry (Appraiser's Signature)

Prod. Supt. (Title)

Aug. 11, 1981 ~~(Date)~~

Note: Comments are required on all Performance Appraisal Reports Appraisals of Distinguished or Outstanding must be substantiated in

detail.

Comments of Appraiser's Superior:

Overall rating is a strong competent. Has done a very good job manufacturing a quality product. Sales districts are very pleased with quality. Needs to improve on maintaining a consistant housekeeping program. Objective is 90 or better. Has improved in labor relations but still needs to work on developing a little more finesse.

Thomas C. Brooks (Signed)

Acting Plant Manager (Title)

8/13/81

Concluding remarks: Comment on corrective action or areas for development, if applicable.

Needs to establish uniform departmental procedures and labor relations actions.

This analysis has been discussed with

me.

Employee's signature:

Dennis Grohs

Date 8-11-81

Employee Comments: The appraisal is fair and just, next year outstanding.

Bavis Notes

Sarvis 4-14

3. High level guys reporting to Mike. Supt. - Foreman. 1 Office Manager (Spitz disagrees but Sarvis will fight)

8. Next level down, category called "technician, something to report to the 3 super. - foreman. Lead man, but working. Head honcho. Discuss this w/ Mike so that he'll understand. Look especially at Dennis Grohs, concerns re: his people abilities. Give Bob my opinion. The other 2 look pretty good. Murray may be salvagable, maybe not at Waukegan